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Dear

Thank you for your letter asking about the adequacy of your client's contract provision to allow you to collect both your fees and service charges, and about the availability of both surcharges under Iowa Code § 537.2501(g) and civil remedies under Iowa Code § 554.3513 for NSF checks. Each question is addressed in turn.

Debt Collection Fees

You asked whether a contract provision in one of your client's contracts would enable the client to collect both a finance charge and your collection fees if the client took the customer or consumer to court.

The Iowa Debt Collection Practices Act sets up a two-pronged test for a debt collector to collect her or his fees:

- they must be reasonably related to the collection efforts made, and
 - the collection fees must be legally authorized.

Iowa Code § 537.7103(5)(c). The first requirement, of course, will be dependent upon your efforts in any individual case.

As to the second requirement, that depends upon the nature of the underlying debt. For example, if the underlying debt you are seeking to collect is subject to the Iowa Consumer Credit Code, no collection fees whatsoever are authorized, except for ones incurred in the event that collateral on the credit transaction is repossessed. Iowa Code § 537.3402.

If the underlying debt is not a consumer credit transaction subject to the I-CCC, but is otherwise a consumer debt, there still must be legal authority for you to collect your fees. At a minimum, that would appear to require express authorization in the agreement. Whether there are any additional restrictions on the

right to charge collection fees in connection with consumer debts which are not consumer credit transactions would be a question you should review with your attorney. In doing so, it will be important for you to give him or her full information concerning the types of debts you are collecting.

As to your question concerning the adequacy of the clause you cite, we are unable to answer that question. First, as noted above, if it is a transaction subject to the provisions of the I-CCC, then no collection fees apart from repossession charges are permitted at all. Second, in any event, our office is charged with interpreting and enforcing the the Iowa Consumer Credit code. We are unable to act as your attorney in drafting contract language.

Charges Permissible on NSF Checks

Your second question asked whether it was possible to collect both the NSF surcharge authorized by Iowa Code § 537.2501(g), and the civil remedy of up to \$500 authorized by Iowa Code § 554.3513.

In general, the answer is that the holder of the dishonored check must choose between pursuing the civil remedy of up to \$500 authorized by Iowa Code § 554.3513 and adding any other surcharges or remedies for collection of NSF checks. See Iowa Code § 554.3513(4). They cannot seek both remedies.

However, in this respect, too, the nature of the underlying debt in connection with which the check was written makes a difference as to what remedies are available. You should be aware that it is our office's interpretation of the amendments made simultaneously in 1995 to Iowa Code §§ 537.2501(g) and Article 3 of the Uniform Commercial Code (Iowa Code Chapter 554, Article 3) that the addition of the surcharge authorized by § 537.2501(g) is the only additional charge available to a creditor (as defined by the I-CCC) where the check was written as a payment instrument for a consumer credit transaction subject to the Iowa Consumer Credit Code. The civil remedy alternative to collect up to \$500 is not available at all to creditors in transactions subject to the I-CCC.

Moreover, only creditors in a limited class of consumer credit transactions may impose the surcharge of up to \$50 authorized by section 537.2501(g) -- those which are subject to a "cardholder agreement." In other words, if the NSF check was written as payment for a consumer credit transaction subject to the I-CCC, the only additional remedies available to the creditor are

- (1) where the consumer credit transaction was one with respect to which a cardholder agreement was issued, i.e., a credit card transaction; and
- (2) where the cardholder agreement clearly and conspicuously disclosed that a surcharge may be imposed; and

(3) limited to the maximum \$50 surcharge in circumstances described in that section.

It is our interpretation that the legislature, by failing to amend Chapter 537 with a provision parallel to Iowa Code § 554.3513 when it added to Chapter 537 a provision parallel to Iowa Code § 554.3512, intended that no such alternative remedy be available to creditors in connection with transactions subject to the I-CCC.

Once again, if you are uncertain as to whether the debts you collect are subject to the I-CCC, you should check with your attorney.

Sincerely,

Kathleen E. Keest

Assistant Attorney General

Deputy Administrator,

Iowa Consumer Credit Code